APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 79-3058

SAVE THE VALLEY, INC.,
Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY,
Respondent,

and

LOUISVILLE GAS AND ELECTRIC COMPANY,
Intervenor-Respondent.

[Filed Jul. 14, 1982]

Before: EDWARDS, Chief Circuit Judge; MARTIN, Circuit Judge; and PHILLIPS, Senior Circuit Judge.

ORDER

Petitioner, Save The Valley, Inc. has moved this court to grant it attorney's fees and costs pursuant to section 307f of the Clean Air Act. 42 U.S.C. § 7607(f) (Supp. III, 1979). Upon the record before us, the motion is DENIED.

ENTERED BY ORDER OF
THE COURT

/s/ John P. Hehman
Clerk

UNITED STATES COURT OF APPEALS
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SAVE THE VALLEY, INC.,
Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY,
Respondent,

LOUISVILLE GAS AND ELECTRIC COMPANY,
Intervenor.

[Filed Mar. 4, 1982]

Before: EDWARDS, Chief Circuit Judge; MARTIN, Circuit Judge; and PHILLIPS, Senior Circuit Judge.

ORDER

In this case, Save the Valley, Inc. has challenged the United States Environmental Protection Agency's issuance of two permits to Louisville Gas and Electric Company. The first permit authorized the limited discharge of pollutants into the air; the second approved a pollution discharge elimination system.

On July 16, 1980, we entered an order upholding the issuance of the air quality permit. At that time, we deferred judgment on the pollution discharge permit pending an administrative hearing under Section 402(a)(1) of the Clean Water Act.

That hearing has now been held. The Environmental Protection Agency Administrator found that the pollu-

tion discharge permit was properly issued and entered a final decision to that effect on September 24, 1981. The parties have stipulated that no appeal was taken from that decision. Thus, the question of the second permit is ripe for our review.

Our study of the record below has persuaded us to uphold the issuance of the pollution discharge permit. Accordingly, we affirm the decision of the Administrator.

Inasmuch as we have already entered judgment on the other issue in this case, this order represents our final disposition of this appeal.

So ordered.

ENTERED BY ORDER OF
THE COURT

/s/ John P. Hehman
Clerk

ISSUED AS AMENDED MANDATE: July 16, 1982
COST: NONE

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ENVIRONMENTAL PROTECTION AGENCY,
Respondent,

LOUISVILLE GAS AND ELECTRIC COMPANY,
Intervenor.

[Filed Jul. 16, 1980]

Before: EDWARDS, Chief Judge; MARTIN, Circuit Judge, and PHILLIPS, Senior Circuit Judge

ORDER

This appeal involves a water discharge and an air pollution permit issued by the United States Environmental Protection Agency in connection with the construction of the Louisville Gas and Electric generating station in Trimble County, Kentucky. Both of the permits, one for a National Pollution Discharge Elimination System and one authorizing discharge of pollutants into the air where there was a showing of the prevention of significant deterioration of air quality, were approved by the Regional Administration of the Environmental Protection Agency. Appellant objected and upon agency review it was determined that on the water discharge permit the previously denied adjudicatory hearing should

have been granted by the Regional Administrator. While this Court was denying appellants two requests for stays regarding both the water and air permits, the agency was proceeding forward with the previously denied adjudicatory hearing. During oral argument the Court was advised that a hearing date has been set before an Administrative Law Judge.

While reaffirming the twice-denied stays, the present proceeding is adjourned. Counsel for the Environmental Protection Agency shall within thirty days of this order advise the Court of the date, time, and place of the hearing and report the status of the proceedings. Further reports shall be filed with the Court by the Agency each thirty days thereafter.

The present case shall remain on the active docket of the Court and shall be consolidated with the appeal of the adjudicatory hearing if one is taken. If no appeal is taken from that decision or it is dismissed, the present case shall be submitted upon the receipt by the Court of a stipulation to this effect from all parties.

Finally, Save The Valley claims that the air pollution permit issued by the EPA for the Trimble County facility should be invalidated because the EPA failed to provide a second public comment period when EPA reevaluated the permit in light of the 1977 amendments to the Clean Air Act. Among the changes the Act mandates are changes in numerical increments by which significant increases in ambient pollutant concentrations were measured. As a result of the necessary reevaluations following the passage of the Act, emission limits for sulphur dioxide were tightened; it was unnecessary to make any changes in the pollution control equipment. To the extent that these considerations were a mere reevaluation, and not a *de novo* proceeding, a second comment period was simply not mandated by any statute or regulation. *See* 42 U.S.C. § 7474; 42 Fed. Reg. 57459 (Nov. 3, 1977). Save The Valley has not demonstrated that the modified

application was materially different from the application originally filed nor that the EPA's action in refusing to grant a second comment period was arbitrary and capricious. We therefore hold that the air quality permit granted to the Louisville Gas and Electric Company is a valid one.

ENTERED BY ORDER OF
THE COURT

/s/ John P. Hehman
Clerk